

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JEFFREY RIOS

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

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Civil No. **PJM 11-2238**

Crim. No. **PJM 10-0017**

MEMORANDUM OPINION

Jeffrey Rios, *pro se*, filed a Notice of Appeal (Paper No. 43) after this Court denied his Motion to Vacate Sentence (Paper Nos. 32, 39), made pursuant to 28 U.S.C. § 2255, on August 28, 2012.¹ The United States Court of Appeals for the Fourth Circuit remanded his appeal to this Court “for the limited purpose of permitting the district court to supplement the record with an order granting or denying a certificate of appealability.” The Court **DENIES** Petitioner’s request for a certificate of appealability.

Rule 11(a) of the Rules Governing § 2255 Cases provides that the district court “must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability will not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong, and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001).

¹ This Court, however, styled Petitioner’s Motion as a motion seeking reduction in sentence pursuant to 18 U.S.C. § 3582.

The Court has considered the record and finds that Petitioner has not made the requisite showing. He asserted that (1) he was entitled to a reduction of his sentence pursuant to the Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372, and (2) his attorney provided him with ineffective assistance in violation of *Strickland v. Washington*, 466 U.S. 668 (1984). Both of Petitioner's claims, rooted in factual and not legal disputes, were wholly without merit and failed to satisfy the pertinent "reasonable jurists" standard. Accordingly, the Court will not issue a certificate of appealability, and any such request is **DENIED**.

A separate Order will **ISSUE**.

/s/
PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

October 5, 2012